

**STATE OF TENNESSEE  
EDUCATIONAL ASSISTANCE PROGRAM**

**(As Adopted Effective August 16, 2008)**

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## **ARTICLE I**

### **ESTABLISHMENT AND PURPOSE**

**Section 1.1**    **Adoption and Effective Date.** The State of Tennessee (“State”) hereby adopts the State of Tennessee Educational Assistance Program (“Program”) for eligible former employees of the State. The Program is effective as of August 16, 2008.

**Section 1.2**    **Purpose.** This Program is designed to furnish educational benefits in the form of a direct reimbursement to the institution or entity that provides for educational courses that are part of a curriculum or apprenticeship program that is acceptable to the State and consistent with the terms of the State of Tennessee Voluntary Buyout Program effective June 10, 2008 (the “VBP”). It is the intention of the State that the educational assistance provided under the Program be eligible for exclusion from the Participants’ income to the maximum extent possible under Section 127(a) of the Internal Revenue Code (the “Code”). The State may provide other benefits to some or all of its employees, including reimbursements for the costs of certain employment-related education, which may qualify for exclusion from gross income under provisions other than Code Section 127. The educational assistance offered under this Program is provided in addition to such other benefits, which shall not constitute a part of this Program.

**Section 1.3**    **Applicability of the Program.** The Program will apply only to VBP participants.

## **ARTICLE II**

### **DEFINITIONS**

Whenever used in the Program, the following words and phrases shall have the respective meanings specified in this Article II unless the context plainly requires a different meaning, and when the defined meaning is intended, the term shall be capitalized in the Program.

**Section 2.1**    **“Benefits”** means the direct reimbursement for Covered Costs paid by the State for educational courses pursuant to the provisions of Article IV hereof.

**Section 2.2**    **“Code”** means the Internal Revenue Code of 1986, as now in effect or as it may be amended hereafter, and includes any regulations or rulings issued thereunder.

**Section 2.3**    **“Covered Costs”** means the tuition and mandatory fees charged for an educational course at any school, institution or other similar entity governed by the Tennessee Board of Regents and the University of Tennessee Board of Trustees, including, but not limited to, technical centers, community colleges, and state universities in Tennessee, and at any apprenticeship program certified by the Tennessee Department of Labor and Workforce Development (“Apprentice Program”) at rates consistent with the rates in effect as of June 10, 2008. Additionally, such term shall include GED testing fees paid in connection with GED classes offered through the Tennessee Department of Labor and Workforce Development’s Career Centers. For purposes of this Program, such term shall not include the costs of books, supplies, equipment, or any tools purchased by a Participant (unless such costs are part of an

apprenticeship program) or the costs of meals, lodging or transportation incurred by a Participant incidental to taking an educational course. Such term also shall not include the costs of any educational course that is paid for by the Participant from any fellowship or scholarship received from a public or private school.

**Section 2.4** **“Effective Date”** means August 16, 2008.

**Section 2.5** **“State”** means the State of Tennessee.

**Section 2.6** **“Participant”** means any former employee of the State who has satisfied the eligibility requirements of Article III hereof.

**Section 2.7** **“Program Year”** means the twelve (12)-month period beginning on January 1 and ending on December 31.

**Section 2.8** **“Program”** means the State of Tennessee Educational Assistance Program.

### **ARTICLE III** **ELIGIBILITY**

**Section 3.1** **Eligibility.** Every former employee of the State who is a participant in the VBP, as determined in accordance with the terms of the VBP, is eligible to participate in the Program.

**Section 3.2** **Termination of Participation.** A Participant will no longer be eligible to participate in the Program on the earlier of the date (a) he or she ceases to be a participant under the terms of the VBP, or (b) on which the Program terminates.

### **ARTICLE IV** **BENEFITS**

**Section 4.1** **Amount.** Subject to the maximum benefit limitations of Code Section 127, every Participant in the Program shall be eligible to receive Benefits under the Program for up to \$5,250 of Covered Costs incurred by him or her during a Program Year, up to a total maximum amount of \$10,800.

**Section 4.2** **Cash.** In no event shall a Participant be entitled to receive cash in lieu of the Benefit or any other taxable compensation he might otherwise be entitled to receive from the State.

**Section 4.3** **Nondiscrimination.** The Program is intended to not discriminate in favor of highly compensated employees as defined in Code Section 414(q) as to eligibility to participate or Benefit distribution, and to comply in this respect with the requirements of Code Sections 127(b)(2) and (3) and the underlying regulations. If, in the judgment of the Program

Administrator, the operation of the Program in any calendar year would result in such discrimination, then the Program Administrator shall select and exclude from participation in the Program such individuals as shall be necessary to ensure that, in the judgment of the Program Administrator, the Program does not discriminate.

## **ARTICLE V**

### **PAYMENT PROCESS**

**Section 5.1**    **Written Request.** A Participant desiring to receive a Benefit under the Program shall submit to the Program Administrator's designee, (hereinafter the Tennessee Student Assistant Corporation ("TSAC")), a written request for such Benefit on a form approved by the Program Administrator.

**Section 5.2**    **Approval.** The Program Administrator or TSAC shall determine whether a request for a Benefit is a Covered Cost and eligible for reimbursement under the terms of this Program and the VBP, and shall notify the Participant of its determination as soon as administratively feasible. The Program Administrator has discretion to determine whether an expense is a Covered Cost for which reimbursement is to be paid pursuant to Article IV.

**Section 5.3**    **Payment.** Upon the Program Administrator's or TSAC's determination that an expense is a Covered Cost under the Program, TSAC shall remit payment for such Covered Cost, subject to the maximum limits set forth herein, directly to the school, institution or other similar entity providing the educational course.

## **ARTICLE VI**

### **ADMINISTRATION**

**Section 6.1**    **Program Administrator.** The State of Tennessee Department of Human Resources shall be the Program Administrator of the Program. It shall be the principal duty of the Program Administrator to see that the Program is carried out, in accordance with its terms, for the exclusive benefit of the Participants and by operating the Program uniformly, from time to time, for similarly situated individuals.

**Section 6.2**    **Powers and Authority of Program Administrator.** The Program Administrator shall have full power to administer the Program in all of its details, subject to applicable requirements of law. For this purpose, the Program Administrator's powers shall include, but shall not be limited to, unilateral discretion to do the following, in addition to any other powers provided by this Program:

- (a) To make and enforce such rules, regulations and policies as it deems necessary or proper for the efficient administration of the Program, including the establishment of (i) claim and review procedures, and (ii) rules and regulations for the conduct of business by the Program Administrator;

- (b) To interpret the Program and to determine all questions arising under or in connection with the Program, including all questions of fact and questions of eligibility to participate and obtain benefits under the Program, its interpretation thereof in good faith to be final and conclusive on all persons;
- (c) To appoint such agents, counsel, accountants, consultants and other persons (regardless of whether they also provide services to the State) as may be required to assist in administering the Program;
- (d) To allocate and delegate its responsibilities under the Program and to designate other persons from time to time to carry out any of its responsibilities under the Program, any such allocation, delegation or designation to be in writing;
- (e) To request of and obtain from any Participant such information and records as deemed necessary and proper; and
- (f) To develop enrollment and any other forms necessary for Program administration.

All actions and determinations of the Program Administrator shall be final and binding on the Participants.

**Section 6.3** **Records and Reports.** The Program Administrator shall maintain such records of its activities and of Program Participants and operations as it deems necessary and appropriate. Program records pertaining to the State or Program Participants (subject to any confidentiality protections required by state and/or federal law) shall be available for examination by the State at reasonable times during normal business hours. The Program Administrator's Program records pertaining to a Participant shall be available for examination by such Participant at reasonable times during normal business hours.

**Section 6.4** **Reliance on Information.** The Program Administrator, and any person authorized to act on its behalf, shall be entitled to rely on the accuracy and genuineness of any written materials, directions or documents furnished by or on behalf of any Participant or State (unless the Program Administrator has actual knowledge that such written item is inaccurate or is not genuine) and shall be fully protected in acting or relying in good faith thereon. The Program Administrator shall have no obligation to take any action upon the occurrence of any event unless and until it has received proper and satisfactory evidence of such occurrence.

## **ARTICLE VII** **FUNDING**

The State shall contribute the amount required to pay Benefits under this Program out of the general fund at the time such Benefits are to be paid. Benefits shall be paid to or on behalf of any Participant upon the submission and approval of a claim for Benefits pursuant to the procedures set forth in Article V. There shall be no special fund out of which Benefits shall be paid.

## **ARTICLE VIII**

### **AMENDMENT AND TERMINATION**

This Program may be amended or terminated at any time by the State, provided, however, that any termination or amendment shall not affect the right of any Participant to claim a Benefit for which he or she may have qualified prior to such termination or amendment, to the extent such amounts are payable under the terms of the Program as in effect prior to the calendar month in which the Program is amended or terminated. Notwithstanding anything herein to the contrary, no Benefit shall be paid under the Program for the Covered Costs associated with any educational course, GED, apprenticeship program or course that would qualify for tuition reimbursement under the VBP that begins after June 30, 2011.

## **ARTICLE IX**

### **MISCELLANEOUS PROVISIONS**

**Section 9.1 Gender and Number.** Except as otherwise clearly indicated by the context, whenever used in the Program a masculine pronoun shall be deemed to include the feminine and masculine genders, words used in the singular shall be deemed to include the plural and words used in the plural shall be deemed to include the singular, as circumstances make such meanings applicable.

**Section 9.2 Headings.** All headings and captions used in this Program are used as a matter of convenience and for reference only, and in no way shall they be considered in determining the scope or intent of the Program or in interpreting or construing any Program provisions.

**Section 9.3 Limitation of Rights.** The establishment, maintenance and provisions of the Program shall not be considered or construed:

- (i) as giving to any employee or former employee any right to be continued in the employment of the State;
- (ii) as limiting the right of the State to discipline or discharge any of its employees;
- (iii) as creating any contract of employment between the State and any employee or former employee; or
- (iv) as conferring any legal or equitable right against the Program Administrator or the State.

**Section 9.4 Rights to State Assets.** No Participant shall have any right to or interest in any assets of the State except as specifically provided in this Program. The Program Administrator shall have no liability to any Participant or the State for making any payment or



providing any benefit pursuant to this Program, and shall merely direct such payments to be made by the State in accordance with the Program.

**Section 9.5**   **No Assignments.** The right of any Participant to receive any assistance under the Program shall not be subject to any claims by any creditor of or claimant against the Participant; and any attempt to reach such amounts by any such creditor or claimant, or any attempt by the Participant to confer on any such creditor or claimant any right or interest with respect to such amounts, shall be null and void.

**Section 9.6**   **Severability.** Any provision of the Program shall be severable, so that if any Program provision is held invalid or unenforceable, such invalid or unenforceable provision shall be severed from the Program and the Program shall operate without regard to such severed provision. In such event, the Program will be construed and enforced as if such severed provision had not been included herein, to the extent necessary to preserve the status of the Program as a qualified educational assistance program under Code Section 127.

**Section 9.7**   **No Guarantee of Tax Consequences.** The State makes no commitment or guarantee that any amounts paid for the benefit of a Participant under this Program will be excludable from the Participant's gross income for federal or state income tax purposes, or that any other federal or state tax treatment will apply to or be available to any Participant. It shall be the obligation of each Participant to determine whether each payment under this Program is excludable from the Participant's gross income for federal and state income tax purposes, and to notify the State if the Participant has reason to believe that any such payment is not so excludable.

**Section 9.8**   **Governing Law.** The Program shall be construed in accordance with the laws of the State of Tennessee, to the extent not preempted by federal law.

**Section 9.9**   **Provisions of Program to Control.** In the event of any conflict between the terms of the Program as set forth herein and in any description of the Program furnished to Participants or others, the Program set forth herein shall control.

**Section 9.10**   **Recovery of Benefit Overpayment.** If any Program benefit paid on behalf of a Participant should not have been paid or should have been paid in a lesser amount, the overpayment may be recovered by the Program Administrator from any monies then payable by the Program. The Program Administrator also reserves the right to recover any such overpayment by appropriate legal action.

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This Program is hereby adopted by the State, effective August 16, 2008, by execution of this Program by the State's duly authorized officers.



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**Deborah E. Story, Commissioner**  
**Department of Human Resources**



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**M.D. Goetz, Jr., Commissioner**  
**Department of Finances and Administration**